

## § 386.15

## 49 CFR Ch. III (10–1–11 Edition)

to the Notice of Claim in writing within 30 days following service of the Notice of Claim. The reply is to be served in accordance with § 386.6 upon the Service Center indicated in the Notice of Claim.

(b) *Options for reply.* The respondent must reply to the Notice of Claim within the time allotted by choosing one of the following:

(1) Paying the full amount asserted in the Notice of Claim in accordance with § 386.18 of this part;

(2) Contesting the claim by requesting administrative adjudication pursuant to paragraph (d) of this section; or

(3) Seeking binding arbitration in accordance with the Agency's program. Although the amount of the proposed penalty may be disputed, referral to binding arbitration is contingent upon an admission of liability that the violations occurred.

(c) *Failure to answer the Notice of Claim.* (1) Respondent's failure to answer the Notice of Claim in accordance with paragraph (a) may result in the issuance of a Notice of Default and Final Agency Order by the Field Administrator. The Notice of Default and Final Agency Order will declare respondent to be in default and further declare the Notice of Claim, including the civil penalty proposed in the Notice of Claim, to be the Final Agency Order in the proceeding. The Final Agency Order will be effective five days following service of the Notice of Default and Final Agency Order.

(2) The default constitutes an admission of all facts alleged in the Notice of Claim and a waiver of respondent's opportunity to contest the claim. The default will be reviewed by the Assistant Administrator in accordance with § 386.64(b), and the Final Agency Order may be vacated where a respondent demonstrates excusable neglect, a meritorious defense, or due diligence in seeking relief.

(3) Failure to pay the civil penalty as directed in a Final Agency Order constitutes a violation of that order, subjecting the respondent to an additional penalty as prescribed in Subpart G of this part.

(d) *Request for administrative adjudication.* The respondent may contest the claim and request administrative adju-

dication pursuant to paragraph (b)(2) of this section. An administrative adjudication is a process to resolve contested claims before the Assistant Administrator, Administrative Law Judge, or Hearing Officer. Once an administrative adjudication option is elected, it is binding on the respondent.

(1) *Contents.* In addition to the general requirements of this section, the reply must be in writing and state the grounds for contesting the claim and must raise any affirmative defenses the respondent intends to assert. Specifically, the reply:

(i) Must admit or deny each separately stated and numbered allegation of violation in the claim. A statement that the person is without sufficient knowledge or information to admit or deny will have the effect of a denial. Any allegation in the claim not specifically denied in the reply is deemed admitted. A mere general denial of the claim is insufficient and may result in a default being entered by the Agency decisionmaker upon motion by the Field Administrator.

(ii) Must include all known affirmative defenses, including those relating to jurisdiction, limitations, and procedure.

(iii) Must state which one of the following options respondent seeks:

(A) To submit written evidence without hearing; or

(B) An informal hearing; or

(C) A formal hearing.

(2) [Reserved]

[70 FR 28481, May 18, 2005]

## § 386.15 [Reserved]

## § 386.16 Action on replies to the Notice of Claim.

(a) *Requests to submit written evidence without a hearing.* Where respondent has elected to submit written evidence in accordance with § 386.14(d)(1)(iii)(A):

(1) Agency Counsel must serve all written evidence and argument in support of the Notice of Claim no later than 60 days following service of respondent's reply. The written evidence and argument must be served on the Assistant Administrator in accordance with §§ 386.6 and 386.7. The submission must include all pleadings, notices, and other filings in the case to date.